

a second cushioned layer provided in said metatarsus/tarsus transition area;  
a third cushioned layer provided in said metatarsus/heel transition area;  
a fourth cushioned layer provided in said heel area; and  
a fifth cushioned layer provided in said plantar arch area.

33. (New) The inner sole as defined in claim 32, wherein:

said fourth cushioned layer defining a surface which is plateau-shaped and  
is raised with respect to said sole surface;

said fourth cushioned layer is substantially oval in shape in the transverse  
direction of said sole base; and

said fifth cushioned layer is in the shape of a sickle.

#### REMARKS

Receipt of the Office Action of August 13, 2001 is acknowledged.

Claims 26-30 are pending and have been finally rejected as follows: claims 26 and 27 as unpatentable under 35 USC 103(a) over Pendergast in view of Wang; claim 28 as unpatentable under 35 USC 103(a) over Pendergast in view of Mauch or Sawyer; claim 29 as unpatentable under 35 USC 103(a) over Pendergast in view of Shames, and claim 30 as unpatentable under 35 USC 103(a) over Pendergast in view of Fenton or Alianiello.

To reduce the issues under consideration, claims 27-30 have been replaced with new claims 31-33, we now have four (4) claims, 26, 31, 32 and 33, rather than five (5) claims, 26-30. In addition, the new claims comprise a combination of the limitations found in claims 27-30. No new limitations have been introduced so that no new issues have been raised. New claim 31 is claim 30 in independent form. New claim 32 is a combination of a portion of claims 27-29, while

new claim 33 is a dependent on new claim 32 and includes the remaining portion of claims 27-29. The scope of claim 26 has been retained. the scope of new claim 31 is the same as that of claim 30 and the scope of new claims 32 and 33 has been restricted. Overall, the the claim scope has not been broadened, but instead refined.

The examiner suggests that Pendergast teaches "cushioned layers 25-34."

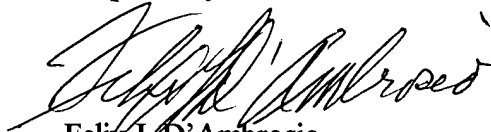
Pendergast himself does not refer to this structure as cushions. He refers to them as segments of a control layer, all of which are flat. Just as important, Pendergast discusses the prior art quite extensively, and in this discussion mentions "cushions" as a "class of orthodic devices" which have "limitations," not something to be desired. Note col. 3, lines 2- 8 of Pendergast which states: "Cushion devices can result in confusing messages to the foot. Such devices are frequently of excessive thickness such that portions of the plantar surface sense them as a foreign objects the devices are contacted and compressed by the foot." Pendergast is clearly not teaching the use of cushions. We cannot, then, extract from Pendergast such a teaching. We must take Pendergast as we find him, teaching, as he does in col. 3, lines 42-44 that: "All of the segments are of the same thickness such that, when assembled, the device will be 'flat' from side to side, and functionally flat from posterior to anterior." This statement does not anticipate the use of cushioned layers as claimed in this application.

The remaining applied references are of little help against this emphatic teaching of Pendergast. That is, no modification of Pendergast to use cushioned layers would occur to one of ordinary skill in the art based upon anything taught in the remaining references because Pendergast rejects cushioned layers.

The present invention provided the state-of-the-art with a new inner sole with cushioned layers in specific areas of the foot which produces a dramatically improved venous flow in the foot. Data has been presented to demonstrate this result. The Venoped, which is the trade name of the inner sole comprising the present invention, has demonstrated its superiority over any other inner sole on the market today.

The examiner is urged to enter the above amendments to the claims and to find them allowable over the art of record. Alternatively, the examiner is urged to enter the above amendments to the claims for purposes of appeal. In this latter regard, the data referred to above, and which is already of record, is being compiled into declaration form for presentation, if necessary. In addition, a Notice of Appeal is being filed concurrently herewith in the event the claims are not allowed.

Respectfully submitted

A handwritten signature in cursive script, appearing to read 'Felix J. D'Ambrosio', written in dark ink.

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